

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SAM SHAW et al.,

Plaintiffs,

-against-

96 Civ. 4259 (JGK)

RIZZOLI INTERNATIONAL
PUBLICATIONS, INC., et al.

Defendants.

RULE 56.1 STATEMENT
OF MATERIAL FACTS

RIZZOLI INTERNATIONAL
PUBLICATIONS, INC., et. ano

Third Party Plaintiffs,

-against-

VALPA, SRL

Third Party Defendant.

-----X

Pursuant to Local Rule 56.1, defendants Rizzoli International Publications, Inc. and RCS Libri & Grandi Opere SpA (collectively "Rizzoli") submit the following statement of material facts as to which there is no genuine issue to be tried.

1. Pool 4 Art World SRL ("Pool 4") created an exhibition of Marilyn Monroe photographs and memorabilia and obtained for use therein the photographs and other images which are the subject of this lawsuit. (Polito Aff. ¶4).

2. Pool 4 contracted with RCS Libri & Grandi Opere SpA to publish *Marilyn Monroe, The Life. The Myth.* a catalogue of the exhibition (the "Rizzoli Catalogue"). (Polito Aff. Ex. A). This action seeks damages for copyright infringement and related claims arising out of publication in 1995 and 1996 in Italy and the United States of the Rizzoli Catalogue. (Polito Aff ¶2.)

3. Marilyn Monroe died in August, 1962. (Polito Aff. ¶5).

4. The photographs that are the subject of this lawsuit were created prior to Ms. Monroe's death. (*Id.*).

5. The following paragraphs numbered 6 to 59 list 95 photographs which are the subject of this lawsuit, indicating for each photograph the name of the plaintiff, the page of the Rizzoli Catalogue (Exhibit A) on which the photograph or photographs appear, the name of the periodical in which the photograph appears, and a publication date for the photograph prior to January 1, 1964 (the "Public Domain Photographs").

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
	<u>Sam Shaw</u>			
6.	146-147	8	"Le Ore"	S. Shaw testified ¹ that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).

¹ The relevant pages of the deposition of Sam Shaw are annexed to the affidavit of Antonio Polito as Exhibit G.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
7.	147	1	"Se"	The photograph was published on the cover of a magazine "Se" which states the publication date as October 1-7, 1954. See also, Shaw p. 76 Ex. G.
8.	147	1	"Cahiers du Cinema"	S. Shaw testified that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).
9.	148	1	"Paris-Match"	Annexed hereto, as Exhibit H, is a copy of the page on which the photograph appeared in an October, 1954 "Paris-Match" magazine, which was made from microfilm belonging to the New York Public Research Library at 42nd Street. The facts regarding the copying of this microfilm are contained in the affidavit of Kenneth Hicks, also attached as Ex. H.
10.	149	1	"Vizioni"	The photograph was published on the cover of a magazine, "Vizioni", which states the publication date as May 14, 1955. See also Shaw p. 76, Ex. G.
11.	184	3	"Le Ore"	The identical photographs were published in the "New York Post" on May 13, 1957. A copy of the relevant page is annexed as part of Exhibit H.

Shirley de Dienes

12.	25	1	"Family Circle"	The photograph was published on the cover of a magazine, "Family Circle", which states the publication date as April 26, 1946.
13.	25	1	"Votre Amie"	The photograph was published on the cover of a magazine "Votre Amie", which states the publication date as September 3, 1946.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
14.	26	1	"Wereld Kroniek"	Shirley de Dienes ² testified that the photograph was published for the first time in 1949. De Dienes pp. 28-29, Ex. I.
15.	26	1	"Pageant"	The photograph was published on the cover of a magazine, "Pageant", which was published in June 1946, according to a book published by the plaintiff, Quon Editions, p. 110, entitled <i>Marilyn Monroe unCovers</i> . Copies of the relevant pages of the Quon Editions book are annexed hereto as Exhibit N.
16.	26	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as December 13, 1947.
17.	27	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as March 26, 1949.
18.	27	1	"Sunbathing Review"	The photograph was published on the cover of a magazine, "Sunbathing Review", which states the publication date as Fall 1958.
19.	28	1	"Noir Et Blanc"	The photograph was published on the cover of a magazine, "Noir et Blanc," which states the publication date as July 16, 1952.
20.	76	1	"Life"	De Dienes testified that the photograph was published in the April 7, 1952 "Life" magazine. (De Dienes, pp. 48-51, Ex. I).
21.	107	8	"Marilyn Monroe Pin-ups"	Copies of the cover page, Copyright page and the pages of the 1953 "Marilyn Monroe Pin-ups" magazine are annexed

² The relevant pages of the deposition of Shirley De Dienes are annexed to the Polito Affidavit as Exhibit I.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
				hereto as part of Ex. I following the pages of De Dienes deposition.
22.	112	1	[Advertisement]	De Dienes testified that the photograph was published for the first time in the 1940's (De Dienes pp. 48-51, Ex. I).
23.	113	1	[Advertisement]	De Dienes testified that the photograph was published for the first time in the 1940's. (De Dienes pp. 67-68, Exh. I)
24.	118	2	[Unknown]	The photographs which are claimed to be protected by the copyright law were published in a magazine spread which was reproduced in the Rizzoli Catalogue. The captions accompanying the photographs refer to Ms. Monroe in the present tense and thus demonstrate that the magazine article and the photographs were published in her lifetime, and before January 1, 1964.
<u>Milton Greene</u>				
25.	92	1	"Mujer"	The photograph was published on the cover of a magazine, "Mujer," which states the publication date as February 1962. <i>See also</i> J. Greene ³ pp. 153-154 Ex. J.
26.	92	1	"Se"	The photograph was published on the cover of a magazine "Se", which states the publication date as October 18, 1957; <i>See also</i> J. Greene pp. 153-154, Ex. J.
27.	108	1	"Tempo"	The photograph was published on the cover of a magazine, "Tempo", which states the publication date as November 26, 1953.

³ The relevant pages of the deposition of Joshua Greene, the son of Milton Greene, are annexed to the Polito Affidavit as Exhibit J.

Exhibit G

documentary come out, what year?

(24) A It's been shot, but it hasn't been released yet.

PAGE 74

(2) Q Do you know --

(3) A Momentarily.

(4) Q Is it going to be shown on United States television?

(6) A Yes.

(7) Q Or just on English television?

(8) A World television. BBC.

(9) Q But you don't have a date?

(10) A I think I gave them permission every place except China. Hong Kong, China, Kuwait.

(12) Q And you don't have a date yet when this is going to be shown?

(14) A No.

(15) Q Is it going to be in the near future?

(16) A Pakistan. I wouldn't allow them to use any of my pictures in those countries.

(18) Q Do you have the name and address--

(19) A Because they have excepted it.

(20) Q Do you have the name of the producer of this BBC documentary?

(22) A The producer was Elaine Shepherd. I don't know the exact address. BBCTV London. They have asked for other photos and there is a Mr. Levy and a David Knight.

PAGE 75

David Knight, isn't it?

(3) MS. MARCUS: Knight. They are the producers or marketers, whatever.

(5) Q Turning now to page 147, did you take all of the photographs on page 147?

(7) A Yes.

(8) Q Yes?

(9) A Yes. Plus I --

(10) Q Yes?

(11) A I had a book with Cahiers du Cinema.

(12) Q You had a book with Cahiers du Cinema? You

wrote a book for them?

(14) A Yes. A book of my photos.

(15) Q When --

(16) A On John Cassavetes.

(17) Q When did that come out?

(18) A About two years ago.

(19) THE WITNESS: Two years ago?

(20) MS. MARCUS: 1992.

(21) THE WITNESS: 92?

(22) MS. MARCUS: Yes.

(23) A 1992.

(24) Q Now, I also want to skip ahead to page 149, which looks like a similar photo to the ones

PAGE 76

on pages 146 and 147. So skipping ahead to 149, did you take this photo?

(4) A That was on the strip of my photographs, my sketches for the ad. I did the ad for the picture, for the logo of the picture. That's one of the photos in there.

(8) Q Were these photos of Marilyn Monroe that are on pages 146, 147 and 149 taken at or about the same time and place?

(11) A The same evening. 51st Street and Lexington Avenue.

(13) Q What was the date?

(14) A I haven't got the exact date.

(15) Q How long --

(16) A The next day it was in Life Magazine.

(17) Q How long --

(18) A Associated Press, worldwide.

(19) Q How long did it take you to take these photographs?

(21) A It could have been the evening of 1954 but it took about ten years before, during the same composition, I designed that composition.

(24) Q Are you saying you had Marilyn pose the way she is depicted in these photographs?

PAGE 77

(2) A Well, I didn't have her

pose.

(3) Q What do you mean by you designed it?

(4) A She did the scene.

(5) Q She did a scene in the movie "The Seven-Year Itch," right?

(7) A Yes.

(8) Q Did you design the scene?

(9) A Yes. I designed -- I laid out the composition, the design. I was assigned to find -- I was assigned by Billy Wilder, Charlie Feldman, producers, to come up with a logo for the picture. I knew that that would become the logo.

(15) Q So are you saying that you recommended that the skirt blowing scene be included in the movie?

(18) A No.

(19) Q Somebody else did?

(20) A The scene was in the script.

(21) Q You didn't write the script?

(22) A I didn't write the script but I selected that moment to do the logo.

(24) Q Were you hired by the producers to do still photography?

PAGE 78

(2) A Yes.

(3) Q For that --

(4) A Special, yes. Correct.

(5) Q Did the producers pay you for these photographs?

(7) A Yes. Paid me for the assignment. The overall assignment.

(9) Q At the end of the assignment when you finished the photographs, who retains the rights to the photographs, the producers or you?

(12) A No. I retained the rights. A special photographer, that's the tradition of the special photographer. I have the rights to the picture.

(15) Q What do you mean by a "special photographer"?

(17) A Well, there is studio photographers, that's automatically with the union

Exhibit H

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SOUTHERN DISTRICT OF NEW YORK

----- X
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-against-

VALPA, SRL

Third Party Defendant.

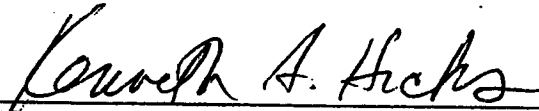
-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Kenneth A. Hicks, being duly sworn, deposes and says:

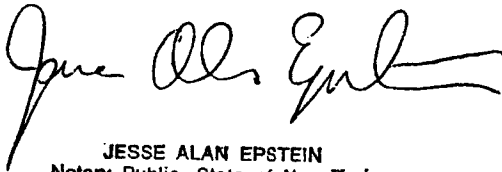
1. I am associated with the firm of Weisman Celler Spett & Modlin, P.C.
attorneys for Rizzoli International Publications, Inc. and RCS Libri & Grande Opere
SpA (collectively "Rizzoli").

2. On December 3, 1997, I went to the New York Public Research Library on
42nd Street. I obtained the microfilm for the "Paris-Match" magazine for the time
period which includes October 1954 and made a copy from the microfilm of the page

which is annexed hereto and which corresponds to the photograph reproduced for the Rizzoli Catalogue at page 148.


Kenneth A. Hicks

Sworn to before me
this 8th day of December 1997.



JESSE ALAN EPSTEIN
Notary Public, State of New York
No. 31-6194860
Qualified in New York County
Commission Expires July 31, 1998

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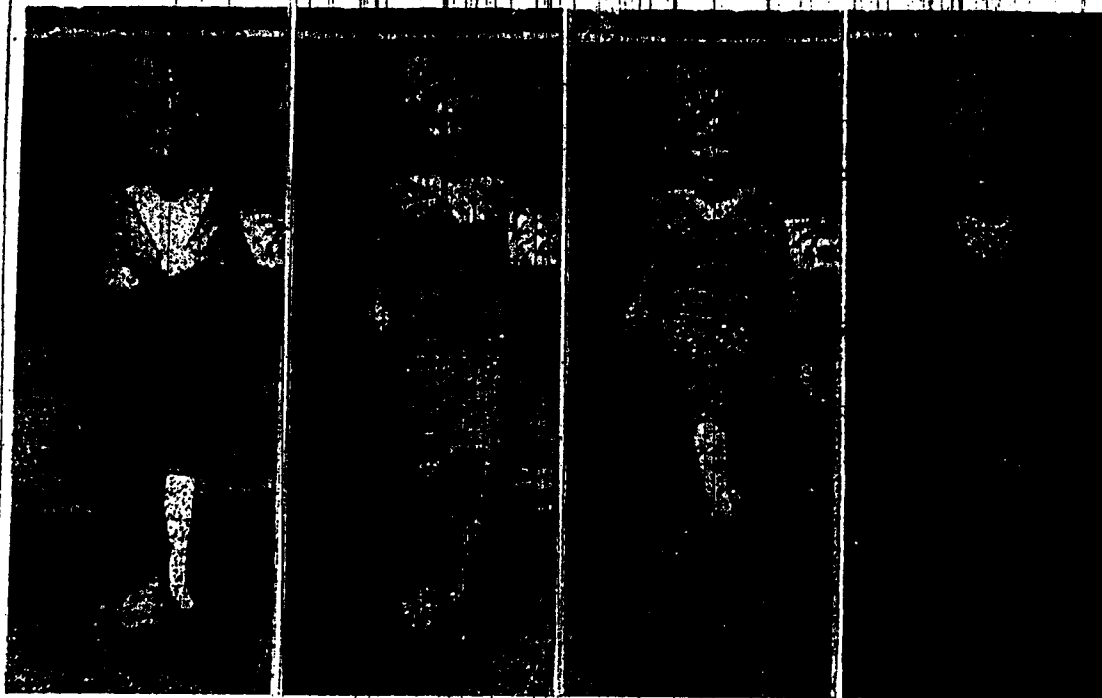
Amerique rencontre la Marilyn d'Europe

« C'est la première fois qu'elle d'ait été en France », dit l'autre. Et l'autre, sans répondre aux questions, se contente de lui en poser d'autres. « Que pensez-vous de la blonde américaine ? » « Elle est très belle », répond la brune. « Vous la trouvez-elle progressée ? » « Des fois », dit la blonde. « Dans le 52° Rue, elle est très belle », dit la brune.

The Seven Year Itch. Pour la voir, Gina s'est précipitée sans être reconnue une haie de 2.000 personnes. Les admirateurs de la vedette américaine, Marilyn, entraînent Gina dans le sous-sol d'un théâtre voisin, le Trans Lux. Un instant, les deux « figures de proue » du cinéma se contemplent en silence. C'est la sympathie qui l'emporte. « Savez-vous, dit la blonde Marilyn, qu'on m'a surnommée la Lolobrigida d'Amérique ? — Justement, répondit la brune Gina, on m'appelle en Europe « l'autre Monroe ».

Hurricane Has Just Gotta Eat

ving. Hriedbart asked C. he should say if Lence's statement indicating in-
son.
the truth," answered the
"tell them" Lence offered
tak, and you look it."



Marilyn Monroe gives fans a loot at White's Field yesterday as she kicks out first ball for game between Israel's Mapelet soccer team and American Soccer League AllStars, which featured a "Salute to Israel" program. The Israeli team won 6-1.

Robinson Filling In for Klu As Reds' Big Man...In Big Way



FRANK ROBINSON

Pittsburgh finally ended its seven-game losing streak by toppling Philadelphia's Robin Roberts, 6-1, in the second game, after bowing to Curt Simmons in the opener, 6-2.

Larry Doby hit two tremendous home runs and Walt Dropo hit one for Chicago in a 5-4 victory over Detroit, snapping the

Doby's long distance doubling could be of great significance to the White Sox, for the center fielder is a notoriously late starter. He had only one homer in the Sox' first 20 games and went about two months before hitting his first big year. Yesterday's double gave Doby three for the day and a total of 28 runs batted in, despite a .288 average.

In the National League, Lew Burdette of Milwaukee is shaping up as the league workhorse, winning 14 in four with a six-hitter against the Cards in the opener. Manager Fred Hunter started Red

tunity to make a complete examination to determine whether permanent damage has been done to the eye.

The 23-year-old pitcher told Dr. Thomas Saturday that he could see better out of the eye than before.

The well Dr. Thomas referred to was caused by hemorrhaging. Score has been given medication to stimulate the absorption. His uninjured left eye also has been covered as movement of that eye would tend to cause movement of the injured eye. The patch was to be removed from the left eye

Score's Eye 'Much Better'

The 23-year-old pitcher told Dr. Thomas Saturday that he could see better out of the eye than before.

The veil Dr. Thomas referred to was caused by hemorrhaging. Surgery has been given medication to stimulate the absorption. His uninjured left eye also has been covered as movement of that eye would tend to cause movement of the injured eye. The patch will be removed from the left eye

Exhibit I

25

27

1 de Dienes
2 Angeles Superior Court.
3 Q. Did you use a lawyer to represent
you?
4 A. Correct.
5 Q. What is his name and address?
6 A. David Mallen, M-a-l-l-e-n, Los
7 Angeles, California, just a second. 333 South
8 Rand, 33rd floor, that's Los Angeles,
9 California, 90071.
10 Q. What photos were involved in this
11 suit that led to a \$250,000 judgment?
12 A. Well, I'm not sure of the amount so
13 you might want to leave a blank because I'm
14 not sure.
15 Q. All right, I'll leave a blank.
16 (Insert.)
17 A. I don't want you to put an exact
18 amount if I'm not sure of the amount.
19 Q. What photos were involved in this
20 particular case?
21 A. Well, I can't tell you what photos,
22 my husband has such a large collection it
23 would be impossible for me to tell you the
24 images that were involved.
25 Elisa Dreier Reporting Corp., * (212) 557-5558
26 30 Park Avenue, Suite 650, New York, NY 10169

1 de Dienes
2 Q. Is that Mr. Mallen?
3 A. Correct.
4 Q. How about the Sports Times case, can
5 you discuss anything about Sports Times?
6 A. I'm not sure so rather than say
7 something I'm not supposed to, here, again, I
8 direct you to Mr. Mallen.
9 Q. All right. Let us turn in the red
10 book to page 26. Do you see page 26?
11 A. Yes.
12 Q. There are three covers on page 26,
13 are any of those pictures your husband's
14 pictures?
15 A. Yes.
16 Q. How many of them?
17 A. All three.
18 Q. Okay, let us start with the picture
19 on the cover that is a magazine that's called
20 Wereld-Kroniek, W-e-r-e-l-d K-r-o-n-i-e-k. Do
21 you see that picture?
22 A. Yes.
23 Q. It's Marilyn Monroe, looks like in
24 the middle of some snow.
25 A. Yes.
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27 230 Park Avenue, Suite 650, New York, NY 10169

26

28

1 de Dienes
2 Q. How many images were involved?
3 A. I don't know because Litwak and
4 Michaelson were two con artists and it's
5 really difficult to know -- to find out, as
6 you know, even getting into a lawsuit the
7 amount that was involved because the truth is
8 not always brought out.
9 Q. What had Michaelson and Litwak done;
10 had they published a book or something else?
11 A. Well, they tried to publish a book
12 and they licensed his images over television
13 and other avenues that I'm not even aware of.
14 They came out -- they held a big exhibit in
15 Las Vega at the Riviera Hotel. I don't know
16 how many images they used for that.
17 Q. Getting back to Edward Weston, what
18 did he do with your husband's images?
19 A. Well, he -- I can't discuss that
20 with you. I'm not even sure if I can discuss
21 any of that case with you, so I would have to
22 decline, and if you have any questions you
23 would have to call my attorney here in Los
24 Angeles because I'm not sure what I can
25 discuss and what I can't discuss.
26 isa Dreier Reporting Corp., * (212) 557-5558
27 0 Park Avenue, Suite 650, New York, NY 10169

1 de Dienes
2 Q. What were the circumstances
3 surrounding taking that picture?
4 A. That was part of their sojourn, I
5 think that was taken in Mount Hood, Oregon.
6 Q. What was the year it was taken?
7 A. 1945.
8 Q. Did your husband pay Marilyn Monroe
9 for her services as a model for the three
10 weeks of this sojourn?
11 A. Yes.
12 Q. How much did he pay her?
13 A. I don't know.
14 Q. Do you have any records from which
15 you can determine the answer to that question?
16 A. I may, I would have to check.
17 Q. All right, we'll leave a space.
18 (Insert.)
19 Q. When was this photo published for
20 the first time?
21 A. I don't know.
22 Q. Do you know if it was published for
23 the first time in Wereld-Kroniek Magazine in
24 1949?
25 A. Knowing Andre that would have been
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27 230 Park Avenue, Suite 650, New York, NY 10169

29

de Dienes

1 the first time but, here, again, I'm not sure.
2 Q. When you say "knowing Andre that
3 would have been the first time," what do you
4 know about his habits that cause you to
5 conclude that that would have been the first
6 time?

7 A. He was very protective of his
8 photographs of Marilyn Monroe and the very --
9 the few that he allowed people to use would
10 have been in the early days, in the 1940s, and
11 because later on he buried his negatives of
12 her and they stayed buried for quite a few
13 number of years and he just did not have her
14 works published, very few of them.

15 Q. Was this photo, the snow scene, was
16 it ever published anywhere else?

17 A. Prior to this date?

18 Q. Right.

19 A. Prior to this date, not to my
20 knowledge.

21 Q. How about after this date?

22 A. After he --

23 Q. After it was published in this
24 Wereld-Kroniek in 1949 was it ever published
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30

de Dienes

1 anywhere else?

2 A. Yes.

3 Q. Where else?

4 A. Marilyn Mon Amore.

5 Q. Anyplace else?

6 A. On a calendar in the United States
7 and I know that for sure.

8 Q. When did that calendar come out?

9 A. Oh, that would have been a calendar
10 that I had given the licensing rights to in
11 1993. Excuse me, let me go back. This also
12 could be one of the pictures that has appeared
13 in other books after this. It could have been
14 anywhere from 19 -- in the 1970s. There's a
15 book that Norman Mailer wrote, but there was a
16 number of his photos, a few that was published
17 in that book, but --

18 Q. Did your husband get any money from
19 the Norman Mailer book?

20 A. Yes.

21 Q. How much money did he get?

22 A. I don't know. Please keep in mind
23 I'm not sure if these are one of the
24 particular images that appeared in that book,
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de Dienes

1 but I know over the years it may have been one
2 of the images that appeared in some of the
3 other books that have been published on her.

4 Q. With respect to the calendar, how
5 much money did you receive for allowing the
6 Marilyn Monroe in the snow picture to be in
7 the calendar?

8 A. I don't know. I'd have to go back
9 to see.

10 Q. Let us leave a space and you can
11 supply that when you read through your
12 deposition.

13 (Insert.)

14 Q. Do you remember how much money you
15 ever got for your Marilyn Monroe in the snow
16 picture on any occasion or any money that your
17 husband got on any occasion?

18 A. Let me just say that I never
19 received, myself, any moneys for that
20 particular picture alone for a single usage
21 and at first what Andre received I do not
22 know.

23 Q. Do you know what copyright notices
24 were in the magazine Wereld-Kroniek?
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de Dienes

1 A. No, I do not.

2 Q. Do you know if your husband put a
3 copyright notice on the original photo before
4 it was sent to Wereld-Kroniek?

5 A. I'm not sure.

6 Q. Do you still have the original photo
7 in your possession?

8 A. Yes.

9 Q. Can you check to see if it has any
10 copyright notice on it and advise us?

11 A. Yes.

12 (Insert.)

13 Q. Let us now go to Picture Post
14 Magazine, which is also on the same page.
15 When was that photo taken?

16 A. 1945.

17 Q. Was that taken during the same
18 three-week trip?

19 A. Correct.

20 Q. When was the first time that photo
21 was published?

22 A. I don't know.

23 Q. Could the first time have been on
24 Elisa Dreier Reporting Corp., * (212) 557-5558
25 230 Park Avenue, Suite 650, New York, NY 10169

45

1 de Dienes
2 a copy of it.
3 And then you say these were postcards.
4 A. No, collector cards.
5 Q. What is a collector card?
6 A. They're like baseball cards, you
7 know, they collect them and trade them.
8 People who are fans of hers.
9 Q. Yes. So you don't remember how much
10 money you earned from these collector cards?
11 A. No, I recall that there was a
12 \$20,000 advance payment but subsequently that
13 company folded up and went bankrupt before the
14 end of the contract.
15 Q. Do you remember how many separate
16 photos were used on these collector cards?
17 A. No, I do not.
18 Q. But you can check your records and
19 if you have the answer to all of these
20 questions you'll supply it, okay?
21 A. Uh-huh, yes.
22 (Insert.)
23
24 Q. We're now going to turn to page 28.
25 Now, that is a photo that's from a magazine,
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230 Park Avenue, Suite 650, New York, NY 10169

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1 de Dienes
2 Noir Et Blanc, N-o-i-r E-t B-l-a-n-c. Do you
3 see that?
4 A. Yes.
5 Q. When was that photo taken?
6 A. 1949, Jones Beach, New York.
7 Q. Was that taken on the same day as
8 the other Jones Beach photo?
9 A. Yes.
10 Q. So the circumstances involving the
11 taking of those two Jones Beach photos were
12 the same?
13 A. Yes, same day.
14 Q. When was this Noir Et Blanc photo
15 published for the first time?
16 A. I don't know, prior to this.
17 Q. Could this have been the first
18 publication of the photo?
19 A. It could have been, but I'm not --
20 I'm not sure.
21 Q. Do you have any records from which
22 you can check when the first publication of
23 this photo occurred?
24 A. I don't know, not prior to this.
25 Q. Do you know if there was any
Elisa Dreier Reporting Corp., * (212) 557-5558
230 Park Avenue, Suite 650, New York, NY 10169

47

1 de Dienes
2 copyright on this photo when it was presented
3 for the publication?
4 A. No, I do not.
5 Q. Well, can you check if you have the
6 original of the photo and advise us?
7 A. Yes.
8 (Insert.)
9
10 Q. Also do you know if Noir Et Blanc
11 printed any copyright notices?
12 A. I don't know.
13 Q. Where else has this photo been
14 published?
15 A. I don't know, probably in some other
16 books that they pirate -- you know, use them
17 without permission.
18 Q. Have you ever licensed this photo to
19 be published by anybody?
20 A. I'm not sure about this particular
21 image.
22 Q. Incidentally, with respect to all
23 the photos that we've talked about so far,
24 were any other photographers present when your
25 husband was doing all of these photos?
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230 Park Avenue, Suite 650, New York, NY 10169

48

1 de Dienes
2 A. No, just Andre, Marilyn and his cat,
3 CooCoo.
4 Q. Let's turn to page 76. On page 76
5 there is a reproduction of a Life Magazine
6 cover, there is a reproduction of a page from
7 Life Magazine and there is a reproduction of
8 one of the Marilyn Monroe calendar pictures.
9 Now, did your husband take any of these
10 pictures?
11 A. Yes, the one where she has the plaid
12 slacks on, not the nude picture.
13 Q. And not the Life Magazine picture
14 either?
15 A. Oh, no, not that one, no.
16 Q. When did your husband take the
17 picture of Marilyn with the plaid pants?
18 A. Either '52 or '53, I'm -- I'm not
19 sure.
20 Q. What were the circumstances?
21 A. I'm not sure on that one.
22 Q. Was that picture taken on the same
23 day as any of the other pictures we've talked
24 about?
25 A. It could have been -- I don't know,
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de Dienes

1 I'm not sure.

2 Q. For example, the inside front cover
3 picture you said was 1952?

4 A. Uh-huh.

5 Q. Could this picture have been done
6 that day also?

7 A. I don't know if it was done that
8 day. Excuse me, could I go back to page, the
9 last page we were on Jones Beach, 28?

10 Q. Yes, let's go back to 28.

11 A. I just wanted to make a note that
12 that picture also did appear in Marilyn Mon
13 Amore.

14 Q. Okay, I appreciate it.

15 MR. EPSTEIN: In fact, Mr. Shaw has found
16 it in Marilyn Mon Amore, so for the record
17 we're going to say what page it is. First we
18 have the find the page. Not all the pages are
19 numbered. It looks like page 98. And
20 Mr. Weingrad wants to know what page it is in
21 the Rizzoli book.

22 MR. SHAW: 28.

23 MR. EPSTEIN: It's 28 in the Rizzoli book.

24 Q. All right, so, now, back to Marilyn
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1 in the plaid pants on page 76.

2 A. Yes.

3 Q. Where was that taken?

4 A. I also think -- I think that was
5 also taken in Bel Air.

6 Q. Was that in some -- in her house?

7 A. Apartment.

8 Q. Do you know how many photos your
9 husband took on that particular day?

10 A. No, I do not.

11 Q. Do you have, like, the negatives
12 from that day?

13 A. I'm sorry.

14 Q. Do you have, like, a set of the
15 photos that he took that day in your
16 possession?

17 A. I have some, I don't -- I have some,
18 yes.

19 Q. Was this Life Magazine the first
20 time that the page 76 photo was published?

21 A. Was that Life Magazine?

22 Q. Well, the caption -- well, I can ask
23 you that. The caption of the Rizzoli book
24 says Life.

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1 A. But that's not his picture where it
2 says Life on it.

3 Q. Take a look again, both pages seem
4 to be from Life Magazine.

5 A. Right, okay, okay.

6 Q. So was that publication in the Life
7 Magazine the first publication of the Marilyn
8 with the plaid pants?

9 A. To my knowledge it would have been.

10 Q. Did your husband get paid for the
11 publication of that photo by Life Magazine?

12 A. I don't know.

13 Q. Did Life Magazine acquire all future
14 rights to that photo when they published it?

15 A. No.

16 Q. How do you know?

17 A. Knowing Andre he would never have
18 given that permission to anyone. Anyone.

19 Q. Were there any copyright notices in
20 Life Magazine with respect to this photo?

21 A. I don't know.

22 Q. Do you know what copyright notices
23 Andre put on the photo before he sent it to
24 Life Magazine?

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1 A. No, I do not.

2 Q. If you can determine that from
3 looking at the original of the photo in your
4 possession, please advise us.

5 A. Okay.

6 (Insert.)

7

8 Q. Mr. Shaw has found on page 116, 117
9 of Marilyn Mon Amore another picture of
10 Marilyn in the plaid pants. It's hard to say
11 if it's the same or a little different. Do
12 you have any familiarity with that picture?

13 A. Yes.

14 Q. Is that the same picture or a
15 different pose at the same time?

16 A. Well, it was taken the same day that
17 the page 76 was taken.

18 Q. I see.

19 A. I'm not sure. It looks like the
20 same image, but...

21 Q. Mr. Shaw is telling me to him it
22 looks a little different, okay, but we can
23 examine it further. So then getting back to
24 the page 76 --

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de Dienes

1 picture did, but, however, I'd have to flip
2 through the book. I don't recall that, it
3 could have but I can take a look.

4 Q. Well, you don't have to do it, we'll
5 do it as we go along. Mr. Shaw will look.

6 A. I don't remember that particular
7 image.

8 Q. Is it possible that the camera
9 company bought all of the rights to reproduce
10 this photo in the future?

11 A. No, no, never.

12 Q. Let us go to page 113 in the Rizzoli
13 book. It has several pictures of people,
14 women mainly.

15 A. The one on the right with the
16 bathing suit, white bathing suit, and her hair
17 is up and it says "Crema" behind it.

18 Q. That's the only one on that page
19 that your husband took?

20 A. Yes.

21 Q. When did he take that photo?

22 A. I believe the year was 1946.

23 Q. Was that taken during the same time
24 as any of the other photos that we've talked
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1 A. Oh, yes.

2 Q. Which pictures did he pay her for?

3 A. I don't know. I have thousands in
4 his collection. It's difficult for me to give
5 you an answer on that.

6 Q. Why don't we leave a space just with
7 respect to the pictures in the Rizzoli book,
8 if there's any information that you have about
9 which ones your husband paid Marilyn Monroe
10 for and if you have any information about how
11 much money she was paid, I'd appreciate if you
12 would just fill that in.

13 A. Okay.

14 (Insert.)

15 Q. Getting back to the picture on page
16 113 of the Rizzoli book, when for the first
17 time was that picture published?

18 A. I don't -- to my knowledge it would
19 be whatever this magazine here we're looking
20 at, the page from it.

21 Q. You mean it was first published in
22 this ad?

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de Dienes

1 about?

2 A. No, it was a different time period.
3 Different day, different month.

4 Q. What were the circumstances involved
5 with taking that photo?

6 A. Well, she and Andre had a rather
7 unique relationship. Just to preface, some of
8 the answers basically are the same that I'm
9 going to give you on this one. She called him
10 up and she had just changed her name to
11 Marilyn Monroe and they had kept in touch for
12 over 16 years and she had called up and said
13 she was celebrating the changing of her name
14 to Marilyn Monroe and went on a little trip to
15 San Juan Capistrano and that was the occasion
16 it was taken, that led to the occasion.

17 Q. Do you know how many pictures your
18 husband took on that occasion?

19 A. No, I do not.

20 Q. Did he pay Marilyn Monroe for these
21 pictures?

22 A. I don't know.

23 Q. In fact, did he pay her for any of
24 the pictures?

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de Dienes

1 A. Right.

2 Q. How much money did your husband get
3 for giving the right to use this photo in this
4 ad?

5 A. I don't know.

6 Q. Do you have any record from which
7 you could determine that?

8 A. No, none, no.

9 Q. Do you know when this ad was first
10 published?

11 A. I do not. From the looks of it it
12 looks like it would in the 40s.

13 Q. Did the photo have a copyright
14 notice on it when it was given to the
15 advertiser?

16 A. I don't know.

17 Q. And if you have the original of this
18 photo I'd like you to check as to whether it
19 had a copyright notice on it.

20 A. Okay.

21 (Insert.)

22

23 Q. Do you know if there was any
24 copyright notice on the ad?

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